



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO The Board of Environmental Protection  
FROM Valerie Whittier, Bureau of Land & Water Quality, Augusta  
RE Consent Agreement for Town of Frankfort  
DATE May 1, 2008

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M R S A Section 480-C, prohibits soil disturbance in and adjacent to a coastal wetland, freshwater wetland, river, stream or brook without first obtaining a permit from the Department

*The Protection and Improvement of Waters Act*, 38 M R S A Section 413, states, in pertinent part, that no person shall directly or indirectly cause soil material to be discharged into waters of the State without a permit therefore from the Department

*The Erosion and Sedimentation Control Law*, 38 M R S A Section 420-C, states, in pertinent part, that a person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource

**Location:** Frankfort, Maine

**Description:** In October of 2007, Department staff found that the Town of Frankfort, as a result of road maintenance, had essentially drained a freshwater wetland as a result of replacing a culvert lower in the road bed. At this location, the Town also dredged the downstream portion of the brook for a distance of approximately 100 feet. The dredge material was then placed along the channel, some of which is freshwater wetland, and discharged sediment and soil to the brook. In November of 2007, staff inspected other road maintenance activities in the town and found that road ditching lead to a discharge of soil to a stream and eventually into a coastal wetland. Although some erosion controls were in use, they were not sufficient to prevent the discharge. Additionally, some of the road ditchings were disposed of on a steep slope adjacent to the stream.

**Environmental Issues:** Removing vegetation and disturbing soil adjacent to wetlands or streams exposes soil such that it is in a position to wash into and degrade these resources. These activities can severely effect the transition zone between wetland/stream and upland habitats, which are used as travel corridors for mammals and nesting sites for avian species. The disturbance within the buffer area can result in the release of silt and nutrient loads into the system affecting the many freshwater organisms that depend on the use of submerged area for a portion of their life cycle.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that the Town of Frankfort submit a restoration plan to permanently stabilize the exposed soils in the ditches and restore the damaged freshwater wetlands and stream. The Agreement also stipulates that Town public works staff attend Department training in erosion control and the Town pay a monetary penalty of \$3,000.00, which has been paid. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

DAVID P. LITTELL

GOVERNOR

COMMISSIONER

IN THE MATTER OF:

<b>TOWN OF FRANKFORT</b>	)	<b>ADMINISTRATIVE CONSENT</b>
<b>FRANKFORT, MAINE</b>	)	<b>AGREEMENT</b>
<b>NRPA, E&amp;S LAW, §413</b>	)	<b>(38 M.R.S.A. § 347-A)</b>
<b>2007-214-L</b>	)	

This Agreement, by and among Town of Frankfort, the State of Maine, Department of Environmental Protection ("Department"), and the State of Maine, Department of the Attorney General ("AG"), as approved by the Maine Board of Environmental Protection ("Board"), is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M R S A § 347-A(1)

The parties agree as follows

- 1 The Town of Frankfort maintains three rights of way referred to as the Black Hill Road, the Brooklyn Side and the Treat Point Road which are located in Frankfort, Maine
- 2 The Town of Frankfort is a municipal corporation, which is organized and exists under the laws of the State of Maine and is located in the County of Waldo Allan F Gordon, Jr is the First Selectman
- 3 The rights of way described in Paragraph 1 of this Agreement contain or are adjacent to streams or brooks as defined by the *Natural Resources Protection Act*, 38 M R S A § 480-B(5) freshwater wetlands as defined by the *Natural Resources Protection Act*, 38 M R S A § 480-B(4), and coastal wetlands as defined by the *Natural Resources Protection Act*, 38 M R S A § 480-B(2) and waters of the State as defined by the *Protection and Improvement of Waters Act*, 38 M R S A § 361-A(7)
- 4 On October 18, 2007, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that the Town of Frankfort replaced a culvert under the Black Hill Road with a larger culvert The replacement culvert was placed 10-12 inches lower than the stream channel. The result was that the water level in the freshwater wetland on the upper end of the culvert has been lowered by approximately 18-24" Furthermore, the Town of Frankfort ditched the outlet stream for approximately 100 feet in length, widened it by approximately three additional feet, and deepened it by approximately 18 inches The dredged soil material was placed adjacent to either side of the stream channel along 100 feet of the stream bank The dredged soil material covered approximately 4500 square feet of natural buffer area, within 35 feet of the stream Two Thousand square feet of this aforementioned dredge fill was placed in a freshwater wetland within 25 feet of the stream There was silt present in the stream channel The Town of Frankfort did not first obtain a

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**TOWN OF FRANKFORT  
FRANKFORT, MAINE  
NRPA, E&S LAW, §413  
2007-214-L**

) **ADMINISTRATIVE CONSENT**  
) **AGREEMENT**  
) **(38 M.R.S.A. § 347-A)**  
)

permit from the Department for these activities. At the time of inspection, no erosion controls were installed on site.

- 5 On November 5 and 6, 2007, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that the Town of Frankfort recently grubbed approximately 1000 feet of road ditches on the Brooklyn Side Road and the Treat Point Road. Hay mulch was placed on most of the exposed soils, silt fence barriers were placed in front of the ditch cross culverts leading to the coastal wetland, however the erosion controls measures were not adequate to prevent soil material from eroding beyond the project boundary and into a protected natural resources. In addition the soil material from the ditches was disposed of on a 70% slope within 20 feet of a stream along a 50 foot stretch of stream bank. The Town of Frankfort did not first obtain a permit from the Department for these activities. There was a significant amount of soil and sediment in the bottom of the ditches, lodged at the inlet end of the cross culverts against the silt fence, in the stream and the coastal wetland.
- 6 The activities described in Paragraphs 4 and 5 of this Agreement constitute the following violations:
  - A. By dredging a stream and by placing fill in and adjacent to a freshwater wetland and stream without first obtaining a permit from the Department, the Town of Frankfort violated the Natural Resources Protection Act, 38 M.R.S.A. §480-C.
  - B. By conducting or causing to be conducted an activity that involves filling, displacing or exposing soil or other earthen materials without taking measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resources, the Town of Frankfort violated the Erosion and Sedimentation Control Law, 38 M.R.S.A. § 420-C.
  - C. By discharging a pollutant, namely soil, to waters of the State without first obtaining a permit from the Department, Town of Frankfort violated the Protection and Improvement of Waters Act, 38 M.R.S.A. § 413.
- 7 On November 6, 2007, the Department issued two Notice of Violations to Town of Frankfort regarding the violations described in Paragraphs 4, 5 and 6 of this Agreement.
- 8 On November 6, 2007, Department staff inspected the property on the Black Hill Road described in Paragraph 1 of this Agreement and determined that the Town of Frankfort placed mulch on the exposed soils adjacent to the stream and freshwater wetland.
- 9 The Board has regulatory authority over the activities described herein.

**TOWN OF FRANKFORT  
FRANKFORT, MAINE  
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2007-214-L**

) **ADMINISTRATIVE CONSENT**  
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) **(38 M.R.S.A. § 347-A)**  
)

- 10 This Agreement shall become effective only if accepted by the Board and approved by the Attorney General
- 11 To resolve the violations referred to in Paragraphs 4, 5 and 6 of this Agreement, Town of Frankfort agrees to
- A No later than April 30, 2008, submit a restoration plan to the Department to permanently stabilize the exposed soils and remove the fill from within 75 feet of the stream at the Black Hill Road site, stabilize the soils in the ditches on the Brooklyn Side and the Treat Point Road and remove the fill from within 75 feet of the stream along the Treat Point Road. The restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Implement the approved plan in accordance with the schedule contained therein
  - B No later than May 1, 2008, Earl Anderson, the Public Works Director and at least two other foremen shall attend a Department Nonpoint Source Training Center workshop that focuses on erosion and sedimentation control devices and Best Management Practices (BMP's). Documentation of successful completion of the workshop must be sent to Department staff by no later than June 1, 2008
  - C Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100 00) per day per violation for the violation of any provision of this consent agreement
  - D Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Three Thousand dollars (\$3000 00) as a civil monetary penalty

TOWN OF FRANKFORT  
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) (38 M.R.S.A. § 347-A)  
)

12 The Board and the State of Maine Attorney General grant Town of Frankfort a release of their causes of action against Town of Frankfort for the specific violations listed in Paragraphs 4, 5 and 6 of this Agreement on the express condition that prior to approval of this Consent Agreement by the Board, the Town of Frankfort demonstrates the authorization or ratification of this Agreement by the Board of Selectmen and that all actions listed in Paragraph 11 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages

TOWN OF FRANKFORT

BY Allen F. Gordon DATE 2-4-2008  
ALLAN F. GORDON, JR., SELECTMAN

TOWN OF FRANKFORT

BY Evelyn P. Adams DATE 2-4-08  
EVELYN P. ADAMS, SELECTMAN

TOWN OF FRANKFORT

BY Richard W. Crossman Sr DATE 2-4-08  
RICHARD W. CROSSMAN, SR., SELECTMAN

BOARD OF ENVIRONMENTAL PROTECTION

BY \_\_\_\_\_ DATE \_\_\_\_\_  
VIRGINIA PLUMMER, CHAIR

SEEN AND AGREED TO  
STATE OF MAINE

BY \_\_\_\_\_ DATE \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL